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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN O. MARKEL

Appeal 2009-005410
Application 09/934,354
Technology Center 2600

Before MAHSHID D. SAADAT, CARLA M. KRIVAK, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1-10 and 15-20. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse and enter a new ground of rejection under 37 C.F.R. § 41.50(b).

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant's claimed invention is a method and system for delivering enhanced content to a set-top box.

Independent claim 1, reproduced below, is representative of the subject matter on appeal:

> 1. A method for delivering enhanced content to a set-top box:
>
> receiving a trigger included in a video signal input at said set-top box for indicating that enhanced content is available;
>
> establishing a communication link between a server and said set-top box;
>
> receiving instructions at the set-top box for identifying a type of said set-top box;
>
> forming a request for said enhanced content from said server based on the type of set-top box; and
>
> receiving enhanced content at said set-top box for generation of an enhanced display.

REFERENCES

Blackketter	US 2002/0056129 A1	May 9, 2002
Leak	US 6,668,378 B2	Dec. 23, 2003

The Examiner rejected claims 1-10 and 15-20 under 35 U.S.C. § 103(a) based upon the teachings of Blackketter and Leak.

ANALYSIS

Appellant contends Leak does not disclose "receiving instructions at the set-top box for identifying a type of set-top box" and "forming a request for enhanced content from the server based on the type of set-top box," as recited in claim 1 (App. Br. 8).

The Examiner finds Leak discloses set-top boxes that are either "connected receivers" or "disconnected receivers," and it must be determined whether a set-top is "connected" or "disconnected" before executing a trigger for "connected" content. If the set-top box is determined to be a "connected receiver," then a "connected" content trigger will be executed. The Examiner concludes these findings meet the limitations of receiving instructions at the set-top box for identifying a type of set-top box and forming a request for enhanced content based on the type of set-top box. (Ans. 9-10)

However, the Examiner's interpretation of a "type" of set-top box, as recited in claim 1, as being a connected receiver or a disconnected receiver is overly broad. The scope of the claims in a patent application is determined not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The status of a set-top box's connection to remote information, for example, an Internet connection, is different from identifying the type of a set-top box (e.g., WebTV, AOLTV, etc. (Spec. 2:7-8; Spec. 8:26-9:4; Fig. 4)) and forming a request for enhanced content based on the type of set-top box. Leak only discloses whether a trigger will be executed, if at all, depending on the

connectivity of the set-top box, not whether the requested enhanced content will be based on the type of set-top box being used.

Claims 7 and 15 also recite limitations relating to the type of set-top box. In particular, claim 7 reads "establishing said set-top box type; transmitting said enhanced content corresponding to said type of said set-top box" and claim 15 reads "in response to said trigger sends a signal containing header information conveying type and location information of said set-top box." As argued by Appellant, Leak fails to disclose these limitations for the same reason discussed above, namely, that "connected" and "disconnected" are not attributes that meet the limitation of a set-top box "type," as recited in the present claims (App. Br. 10, 11).

For these reasons, we do not sustain the rejection of claims 1, 7, and 15 over Blackketter in view of Leak. Nonetheless, the claimed invention would have been obvious over Blackketter and the prior art set forth in Appellant's Provisional Application No. 60/227,062, and accordingly, we enter a new ground of rejection

NEW GROUND OF REJECTION

Pursuant to 37 C.F.R. § 41.50(b), we enter a new ground of rejection. Claims 1, 4-10, 15, and 18-20 are rejected under 35 U.S.C. § 103(a) based upon Blackketter in view of the reference titled "Using a Browser Sniffer to

Detect WebTV" ("the WebTV reference"), which is appended to this decision.[2]

Contrary to the Examiner's finding that Blackketter does not disclose the steps of "establishing," "receiving," and "forming" (Ans. 4), Blackketter does teach "establishing a communication link between a server and said set-top box" and "receiving enhanced content at said set-top box for generation of an enhanced display" (Blackketter ¶ [0002]).

The WebTV reference discloses a browser sniffer that when combined with Blackketter discloses "receiving instructions at the set-top box for identifying a type of said set-top box" and "forming a request for said enhanced content from said server based on the type of set-top box," as claimed. A set-top box browser may retrieve Web content via an HTTP request, wherein the HTTP request includes a USER_AGENT attribute and the content is based on the USER_AGENT (WebTV reference, page 1). For example, in the CGI script written in Perl, if the USER_AGENT is "WebTV," the browser is redirected to the page "tv_index.html" that is specifically intended for WebTV users (page 2). In this case, the USER_AGENT attribute meets the limitation of a "type" of set-top box. The set-top box necessarily must have "receiv[ed] instructions . . . for identifying a type of said set-top box" by determining and providing the USER_AGENT attribute in the HTTP request. Further, the HTTP request is

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[2] Provisional Application No. 60/227,062, which is the basis for a claim of priority benefit for the present Non-Provisional Application, describes at page 1 a "prior art method for use with enhancements" that may be found at http://developer.webtv.net/design/sniffer. A search for an archived version of this Web site on http://www.archive.org yielded the page titled "Using a Browser Sniffer to Detect WebTV," dated June 8, 1999 (see appended document).

"based on the type of set-top box" because it includes the USER_AGENT attribute.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the browser sniffer of the WebTV reference with the system disclosed in Blackketter to obtain Appellant's invention. The skilled artisan would recognize that the system of Blackketter would have benefited from the disclosure of the WebTV reference providing "a useful tool for customizing [a] Web site to various categories of users" whereby one could "deliver a certain Web page to [a] WebTV viewer and a different page to [other] viewers" (WebTV reference, page 1),

With respect to claim 7, the Examiner finds Blackketter does not disclose the "sending" and "decoding" limitations (Ans. 6). However, as noted above with respect to claim 1, the WebTV reference teaches sending an HTTP request with the USER_AGENT attribute, which the server executing the CGI script uses to redirect the set-top box browser to the page specifically intended for the identified USER_AGENT (WebTV reference, page 2). The HTTP request meets the limitation of "sending a signal from said set-top box to said server." Further, redirection of the WebTV browser based on the USER_AGENT attribute meets the limitations of "decoding a signal header," "based on the decoded signal header, establishing said set-top box type," and "transmitting said enhanced content corresponding to said type of said set-top box." Particularly, the USER_AGENT corresponds to a signal header. The CGI script determines whether the USER_AGENT is "WebTV," which corresponds to decoding a signal header and establishing the set-top box type (see page 2). The set-top box browser is redirected to

the "tv_index.html" page intended for WebTV set-top boxes, which corresponds to transmitting enhanced content corresponding to the set-top box type (see page 2). Thus, the combination of Blackketter in view of the WebTV reference meets all of the limitations of claim 7 and would have been obvious for the reasons articulated above with respect to claim 1.

With respect to claim 15, the Examiner finds Blackketter does not disclose "in response to said trigger" the set-top box "sends a signal containing header information conveying type and location information of said set-top box" (Ans. 7). However, as set forth above, the USER_AGENT attribute of the HTTP request disclosed in the WebTV reference meets the limitation of sending a signal containing header information conveying the type of set-top box. Further, it is well known in the art that Internet packets include a header field corresponding to a source IP address, which corresponds to "header information conveying . . . location information of said set-top box." Thus, the combination of Blackketter in view of the WebTV reference meets all of the limitations of claim 15 and would have been obvious for the reasons articulated above with respect to claim 1.

With respect to dependent claims 4, 8, and 18, Blackketter discloses a trigger "located in a vertical blanking interval of the video signal input" (Blackketter ¶ [0004]).

With respect to dependent claims 5, 9, and 19, Blackketter discloses a trigger that is "a command string written in Advanced Television Enhancement Forum compliant code" (Blackketter ¶ [0033]).

With respect to dependent claims 6, 10, and 20, Blackketter discloses a communication link established at the instigation of a trigger is a Hyper Text Transfer Protocol communication link (Blackketter, Fig. 4).

DECISION

The Examiner's decision rejecting claims 1-10 and 15-20 is reversed.

A new ground of rejection for claims 1, 4-10, 15, and 18-20 under 35 U.S.C. § 103(a) is entered.

TIME PERIOD

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .
>
> (2) Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

REVERSED

37 C.F.R. § 41.50(b

ELD

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Using a Browser Sniffer to Detect WebTV

June 8, 1999

A browser "sniffer" or detector is a useful tool for customizing your Web site to various categories of users. For example, you can use a browser sniffer script to deliver a certain Web page to your WebTV viewers and a different page to your Internet Explorer or Netscape visitors. You can create custom sniffers to detect all sorts of browsers; this article focuses on the detecting the WebTV browser with JavaScript and CGI.

JavaScript

The JavaScript code in this example uses the navigator object, which contains information about the software a viewer is using to view a Web page. Also, since browsers that do not support JavaScript are still being used, you should probably include a NOSCRIPT code block with a default BODY tag.

Once you have done the setup code, you can apply the if block anywhere in your HTML code where you would like to refine page delivery for a particular viewer.

JavaScript example:

```
<NOSCRIPT>
   <b>I see you've turned off JavaScript.</b>
</NOSCRIPT>

<SCRIPT LANGUAGE="JavaScript"><!--

if(navigator.appName.indexOf("WebTV") != -1) //WebTV
detected
   document.writeln("How do you like that WebTV?");

else //Non-WebTV detected.
   document.writeln("When are you going to get
```

```
WebTV?");

//-->
</SCRIPT>
```

CGI

This CGI script separates WebTV from other browsers. The example noted below is a Perl CGI solution. This script detects the browser visiting the site by looking at its HTTP_USER_AGENT string. If that string contains "WebTV" then the browser is redirected to /tv_index.html. Otherwise, the browser is redirected to /ie_index.html.

Example of CGI script written in Perl:

```
#!/usr/local/bin/perl -w

$webTV_url = "/tv_index.html";
$other_url = "/ie_index.html";

if ($ENV{'HTTP_USER_AGENT'} =~ /WebTV/)
{
   $location = $webTV_url;
}

else # all others
{
   $location = $other_url;
}

print "Location: $location\n\n";
```